IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1099 of 2001
AND
SPECIAL CIVIL APPLICATION Nos.1100 to 1108 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRINCIPAL, SURAT PRIMARY SCHOOL

Versus

DAXABEN KIRITKUMAR TADADIYA

Appearance:
MRS KA MEHTA with MR VH DESAI for Petitioners
MR DIPAK R DAVE for Respondent No. 1
MR VM PANCHOLI, AGP for Respondent Nos.2, 3 & 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 27/04/2001

COMMON ORAL JUDGEMENT

Rule. Mr.Dipak R Dave, learned counsel waives service of rule for Respondent No.1 and Mr.Pancholi,

learned AGP waives service of rule for Respondent Nos.2, 3 and 4.

2. What is challenged in this group of petitions is the common judgment and order dated 12.1.2001 passed by the Gujarat Primary Education Tribunal in Application Nos.55 to 62 and 64 to 66 of 2000.

3. The petitioners herein (hereinafter referred to as "the School Management") are running certain primary schools in the city of Surat. The School Management had applied to the Administrative Officer (respondent No.2 herein) under the Bombay Primary Education Act, 1947 ("the Act" for brevity) for permission to reduce the number of classes from 22 to 17. That application was given on 28.7.1999. The application was ultimately granted by the Administrative Officer on 22.6.2000. However, in the meantime the School Management terminated the services of 10 teachers, who are respondents herein on 25.4.2000. The termination orders were challenged before the Tribunal which allowed the applications and directed the School Management to reinstate the teachers with full backwages. The applications were allowed by the Tribunal mainly on the following two grounds :-

(i) The School Management had terminated the services of the teachers on 25.4.2000 without obtaining the approval of the Administrative Officer under Clause 5 of Schedule F for reduction in the number of classes, and therefore, termination orders were illegal. The approval granted by the Administrative Officer under Clause 5 of Schedule F on 22.6.2000 could not have been related back to the date of termination retrospectively.

(ii) The inquiry prescribed by Section 40-B (1)(a)(i) of the Act read with Schedule F to the Bombay Primary Education Rules, 1949 (hereinafter referred to as "the Rules") was not held in accordance with law, and therefore also termination orders were illegal.

4. At the hearing of this group of petitions, the learned counsel for the School Management states that in view of the alleged infirmities found by the Tribunal the School Management is ready and willing to proceed further in accordance with law and that therefore the impugned orders of the Tribunal requiring the School Management to reinstate 10 teachers (who are respondents herein) in service may be set aside.

5. Having heard the learned counsel for the parties, the impugned orders of the Tribunal are hereby modified in terms of the following directions.

(I) The School Management shall proceed on the basis of the approval dated 28.6.2000 granted by the Administrative Officer for permission to reduce the number of classes from 22 to 17 and on that basis the School Management shall issue fresh notice to the affected - teachers and hold inquiry under section 40-B (1) (a) (i) of the Act read with Schedule F to the Rules.

(II) The inquiry shall be completed within three months from today and thereafter the School Management shall submit the proposal to the Administrative Officer under Section 40-B (1)(a)(ii) of the Act.

(III) The school management shall send a copy of the said proposal to the affected teachers also on the same day by Registered Post A.D. Within one week of the date of receipt of the proposal, the affected teachers will be entitled to submit their objections, if any.

(IV) The Administrative Officer shall consider the proposal of the School Management for approval within the time stipulated by Section 40B(1)(b) of the Act and also the objections, if any, of the affected teachers.

(V) The School Management shall pay the respondent teachers salary and allowances for the period from 26.4.2000 till the date of conclusion of the inquiry and passing of the fresh orders, if any, by the School Management. Till then the respondent teachers shall not insist for reporting for the duty but they shall be treated as in service for all the other purposes.

The arrears till 30.4.2001 shall be paid by May 15, 2001 and the current salary and allowances shall be paid on the 7th day of each succeeding month till the concerned teachers continue in service.

6. At the request of Mr.Dave for the respondent teachers it is clarified that this order is passed without prejudice to the rights, if any, of the petitioners to challenge the order dated 22.6.2000 of the

Administrative Officer in appropriate proceedings before an appropriate forum provided it is done within two weeks from today.

7. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S.Shah,J)

(pathan)